

14970 melody  
PTT

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-199788

DATE: September 22, 1980

MATTER OF: Will Ross, Inc.

**DIGEST:**

Where circumstances did not put contracting officer on notice of possible mistake in bid, acceptance of bid resulted in valid and binding contract. Therefore, there exists no legal basis for reforming or rescinding contract based on contractor's subsequent claim of unilateral mistake in bid.

The Veterans Administration (VA) has forwarded for our consideration a claim of mistake in bid submitted by Will Ross, Inc. (Will Ross) following the award to that firm of a contract to supply hypodermic syringes.

The solicitation, issued on September 28, 1979 by the VA Marketing Center, Hines, Illinois, called for quantities of both 5 to 6 cc and 10 to 12 cc syringes and clearly specified the unit as a box of 100. Of the two firms responding prior to the October 23, 1979, bid opening date, Will Ross submitted the lowest bid for both quantities at \$6.11 and \$6.60 per unit, respectively. The only other bidder, Sherwood Medical, bid only on the 10 to 12 cc quantity, offering a price of \$7.08 per unit.

It is reported that Will Ross' prices were 18 percent higher than the preceding contractor's and within the range anticipated by the VA. Since Will Ross had never before bid low on this item and was a new potential supplier, the contracting officer telephoned the firm on November 16, 1979 to confirm its prices and its understanding of the specifications and delivery schedule. Will Ross replied that all three elements were correctly reflected in its bid and, on November 28, 1979, that firm was awarded the contract.

~~612108~~

113370

Upon receiving the delivery order on December 4, 1979, a Will Ross representative informed the contracting officer via telephone that the contractor had neglected to take exception to the packaging requirement and that its quoted price was erroneously based on a 50 per box unit instead of the required 100 per box. Will Ross claims that as a result of this mistake, its price represented only 50 percent of the VA's requirement. This assertion is substantiated in part by the fact that the price schedules upon which Will Ross allegedly based its bid indicate the manufacturer's unit of measure as 50 per box.

The VA permitted Will Ross to withhold delivery pending resolution of its claim but, in the interim, due to "imminent need," procured the items in question on a resolicitation at prices of \$7.54 and \$8.21. Will Ross apparently seeks rescission or modification of its contract.

The general rule applicable to a mistake in bid alleged after award is that the sole responsibility for preparation of the bid rests with the bidder, and where a bidder makes a mistake in bid, it must bear the consequences of its mistake unless the mistake is mutual or the contracting officer was on actual or constructive notice of error prior to award. Prince Construction Company, B-196726, January 9, 1980, 80-1 CPD 29; Mid-South Specialties, Inc., B-196711, December 19, 1979, 79-2 CPD 423.

In the instant case, we see nothing in the record which should have placed the contracting officer on notice of a possible mistake in the Will Ross bid. As indicated above, Will Ross' prices, although somewhat higher than the previous contractor's, were within the range expected by the VA and therefore were unremarkable. In view of these facts, we conclude that the contract was valid and binding as awarded. It is also clear that the alleged mistake was unilateral on the part of Will Ross, and not mutual. Under these circumstances, there exists no legal basis for granting the relief requested.



For the Comptroller General  
of the United States